IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 6342 of 2007(E)

PETITIONER:

K.R. THANKAPPAN, (B.D.O., ELANTHOOR,
PATHANAMTHITTA), S/O.RAGHAVAN,
`ROHINI', MALAMELKARA, ADOOR,
PATHANAMTHITTA.

BY ADV. SRI.JACOB P.ALEX

RESPONDENTS:

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1. STATE ELECTION COMMISSION, KERALA
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE COMPLEX, LMS JN.,
THIRUVANANTHAPURAM.

2. SECRETARY, STATE ELECTION COMMISSION,
KERALA CORPORATION OFFICE COMPLEX,
LMS JN., THIRUVANANTHAPURAM.

3. DISTRICT COLLECTOR, KOZHIKODE.

4. DEPUTY COLLECTOR (ELECTIONS),
KOZHIKODE.

5. BLOCK DEVELOPMENT OFFICER,
KUNNUMMEL BLOCK PANCHAYAT,
KUNNUMMEL, KOZHIKODE.

6. MOTOR WORKERS UNION,
NADAPURAM AREA COMMITTEE
NADAPURAM, KOZHIKODE.

R1 TO R5 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMMN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.6342 OF 2007

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DATED THIS THE 27th FEBRUARY, 2007

J U D G M E N T

The petitioner who was the Assistant Returning Officer for the Kunnummel Block Panchayat in Kozhikode District for the general elections held in the year 2005 to the Local Self Government Bodies submitted Ext.P1 bill before the 3rd respondent-District Collector (District Election Officer) for approval with a request for allotting the balance amount. He complains that without hearing him or consulting him, the bill was altered and money which was already spent by him against vouchers was reduced. The 1st respondent is the State Election Commission; the 2nd respondent is its Secretary; respondents 3 to 5 are respectively the District Collector (District Election Officer), the Deputy Collector (Elections) and the present Block Development Officer of Kunnummel Block Panchayat; and the 6th respondent is the Motor Workers' Union. The petitioner submits that for the purpose of conducting elections he had drawn an advance of Rs.9,50,000/- from the Election Funds in three instalments as per rules. He claims to have placed detailed contingent bill along with vouchers of all transactions before the 3rd respondent who assigned it to the 4th respondent for verification. Ext.P1 is copy of the detailed bill. According to the

petitioner, money on each item was spent in accordance with the necessary guidelines and was within the prescribed ceiling limits. As per Ext.P1, the total expenditure for conducting election is Rs.10,67,874/- and after adjusting the advance amounts paid, an additional amount of Rs.1,17,874/- was sought to be allotted for settling the accounts. But the 4th respondent allotted only Rs.24,838/- as additional amount as against the claim of Rs.1,17,874/-. An additional amount of Rs.93,309/- is yet to be allotted for settling the accounts. According to the petitioner, Ext.P1 ought to have been allowed in toto. Ext.P2 is copy of the letter sent by the petitioner to the 4th respondent requesting for release of the balance amount. The 6th respondent, an Association representing owners of buses and jeeps started agitation claiming reimbursement of rental charges for the vehicles which were plied for the general elections. The petitioner requested the 4th respondent for allotment of the balance amounts so that the dues of the 6th respondent could be settled at the earliest. Ext.P3 is copy of the letter sent by the 4th respondent to the petitioner's request. The petitioner contends that the reasoning in Ext.P3 is not correct. Petitioner responded to Ext.P3 by sending another letter Ext.P4, requesting that expeditious steps may be taken

to settle the account. He states that no steps have been taken in spite of Ext.P4 so far for settling the balance amounts. Later, the petitioner sent Ext.P5 letter dated 29.11.2006 to the 4th respondent, apart from personally requesting him to allot the balance amount of Rs.93,006/- as claimed in Ext.P1 so that the amounts due to bus and jeep owners by way of rental charges could be settled. Thereafter, on 3.12.2006, the petitioner wrote a letter to the 1st respondent seeking issuance of directions to the 4th respondent in the matter. Ext.P6 is copy of that letter. While so, the 6th respondent approached the 1st respondent requesting for immediate action for release of the charges of the buses and jeeps hired by the petitioner for conduct of the election. Without hearing the petitioner and without giving an opportunity to him to submit his explanation, the 2nd respondent passed Ext.P7 order directing the petitioner to disburse the hire charges of the vehicles to the owners in full, as sanctioned by the District Collector, within 10 days failing which revenue recovery proceedings and disciplinary action will be initiated against the petitioner. Impugning Ext.P7 on various grounds, the petitioner prays in this Writ Petition for a writ of certiorari quashing Ext.P7 and for a writ of mandamus commanding respondents 3 and 4 to sanction the

balance amount of Rs.93,006/- to the 5th respondent as requested in Ext.P5.

2. On behalf of respondents 1 and 2, Mr.Murali Purushothaman, Standing Counsel for the 1st respondent-Election Commission has filed a detailed statement. Annexure-A produced along with the statement is copy of the Government notification issued under Section 71 of the Kerala Revenue Recovery Act by which the provisions of the said Act have been made applicable for recovery of amounts due from any person to the Kerala State Election Commission. It is stated that the petitioner has drawn an amount of Rs.9,50,000/- in advance to meet the expenses in connection with the elections and it was the petitioner's duty to satisfy the District Election Officer and the State Election Commission that the amounts received by him are properly expended and the expenses are covered by proper documents. In the final bill he claimed hire charges for 24 buses at Rs.87,600/- and similar charges for 60 buses at Rs.37,245/-. The entire amount (Rs.1,24,845/-) claimed by the petitioner towards hire charges for the vehicles have been admitted by the District Collector. But those amounts were not disbursed to the vehicle owners in spite of Exts.P3 and P4 directions. While so, the 6th respondent submitted a

representation before the District Election Officer (District Collector) which was made over to the 5th respondent by the District Election Officer and the Commission after calling for a report from the District Collector passed Ext.P7 noticing that the petitioner failed to disburse the hire charges to the owners of vehicles in spite of specific directions. The statement refers to Section 48A of the Kerala Panchayat Raj Act which provides that Returning Officer, Assistant Returning Officer or any other officer designated for the conduct of election shall be deemed to be on deputation to the Election Commission during the period from the date of notification till the date of declaration of results and such officer shall be subject to the control, supervision and command of the Election Commission during that period, and submits that though it may not be possible to deem such officer to be on deputation after the elections, so as to invoke the provisions of Section 48A nothing can prevent the Election Commission to recommend to the authority competent to institute proceedings and to impose penalty, to initiate disciplinary action against officers like the writ petitioner for breach of official duty in connection with election and for other misconducts. The statement concludes by submitting that without prejudice to the various contentions raised, in order to remove

apprehension on the part of the writ petitioner and for fairness of things, the Commission has been advised to give the writ petitioner an opportunity of hearing with regard to the matters referred to in Exts.P6 and P7.

3. When the Writ Petition came up for admission, Sri.Murali Purushothaman, Standing Counsel for the 1st respondent-Election Commission took notice on behalf of respondents 1 to 5. I have heard the submissions of Sri.Jacob P.Alex, counsel for the petitioner and those of Sri.Murali Purushothaman, Standing Counsel.

4. Making submissions on the basis of the various grounds raised in the Writ Petition, Mr.Jacob P.Alex would refer to Exts.P1, P5 and P7 and submit that there is no justification at all for not allowing Ext.P1 in full. The competence of the Secretary of the Election Commission to pass an order in the nature of Ext.P7 was questioned seriously by Mr.Alex. Ext.P7, in any event, has been passed in gross violation of all principles of natural justice, concluded the learned counsel.

5. Sri.Murali Purushothaman, learned Standing Counsel would refer in extenso to the statement filed by him. He referred to Section 39 of the Panchayat Raj Act and submitted that the challenge on the

competence of the Election Commission Secretary to pass Ext.P7 cannot be sustained.

6. Though I have considered the rival submissions addressed before me, I am not inclined to decide the issue on its merits since it was fairly conceded before me by Sri.Murali Purushothaman that Ext.P7 order which, if implemented, will visit the petitioner with serious civil consequences has been passed without hearing the petitioner. Mr.Murali in fact submitted that the Election Commission has already directed the 4th respondent to be present before the 1st respondent at 11 a.m. on 8.3.2007 with all the files.

7. Under these circumstances, the Writ Petition itself will stand disposed of with the following directions:-

The 1st respondent will reconsider the issue involved in Ext.P6 and leading to Ext.P7 and the claim of the petitioner that Ext.P1 bill is to be allowed in full, after hearing the petitioner, a representative of the 6th respondent and also the 4th respondent who has already been summoned by the Election Commission, at their earliest. Till such time as a fresh decision is taken, Ext.P7 will be kept in abeyance and revenue recovery proceedings will not be initiated against the petitioner. The State Election Commissioner will conduct hearing as

directed above. Once fresh decision is taken, petitioner will be informed of the same.

(PIUS C. KURIAKOSE, JUDGE)

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